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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

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DISTRICT OF COLUMBIA, *Petitioner*

v.

PAUL S. DAVIS, *Respondent.*

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**Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

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CHARLES T. DUNCAN,
*Corporation Counsel, D. C.*

HENRY E. WIXON,
*Assistant Corporation Counsel, D. C.*

Attorneys for Petitioner
District Building,
Washington, D. C. 20004

PRINTING DIVISION—D. C. GOVERNMENT

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Petitioner District of Columbia, a municipal corporation, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on January 5, 1967.

## OPINIONS BELOW

The decision of the District of Columbia Tax Court and its findings of fact and opinion are not officially reported, but are printed in Appendix A hereto, *infra* p. 1a. The opinion of the division of the Court of Appeals rendered

on January 5, 1967, has not been officially reported, but is printed in Appendix B hereto, *infra* p. 17a.

## JURISDICTION

The findings of fact and opinion of the District of Columbia Tax Court were entered December 22, 1965, Appendix A, *infra* p. 1a. The judgment of the Court of Appeals was entered January 5, 1967, Appendix B, *infra* p 29a. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1) and D.C. Code, 1961 edition, Section 47-2404.

## QUESTIONS PRESENTED

Where respondent Paul S. Davis, on April 1, 1963, moved from Detroit, Michigan to the District of Columbia, and from that date to the end of the calendar year 1963 maintained a place of abode in the District and was domiciled in the District and, under the District of Columbia Income and Franchise Tax Act of 1947, as amended, was concededly subject to District of Columbia individual income tax, the questions presented are:

1. Although a part of respondent Davis's income for the calendar year 1963 had been earned prior to the time he came to the District of Columbia, was not the respondent, pursuant to the District's taxing statute, liable to District of Columbia individual income tax on his entire income for that year?

2. Since, by specific provision of the District's taxing statute, respondent Davis was entitled to credit against his District income tax liability any income taxes or intangible personal property taxes paid by him to Michigan or to one of its political subdivisions for the portion of 1963 during which he was domiciled in Michigan, is not the District's statute clearly valid, avoiding any contention, constitutional or otherwise, that the Congress lacked the authority to subject respondent to tax on his entire income for 1963?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendments to the Constitution of the United States—Article V and Article XIV, Section 1.

District of Columbia Income and Franchise Tax Act of 1947, as amended, 61 Stat. 328, ch. 258: Title I, Section 4(k), (s), and (t), D.C. Code, 1961, Section 47-1551c(k), (s), and (t); Title III, Section 2(a), D.C. Code, 1961, Section 47-1557a; Title IV, Sections 1, 2, and 3, D.C. Code, 1961, Sections 47-1561, 47-1561a and b; Title V, Section 2(a), D.C. Code, 1961, Section 47-1564a; Title VI, Section 1, 2(d), (e), and (f), 3, 4(a) and 5(a), D.C. Code, 1961, Sections 47-1567, 47-1567a(d), (e), and (f), 47-1567b(a) and (b), 47-1567d(a); Title X, Section 1, D.C. Code, 1961, Section 47-1580.

With the exception of Title IV, Sections 1, 2, and 3, D.C. Code, 1961, Sections 47-1561, 47-1561 a and b, all of the foregoing provisions of the District of Columbia Income and Franchise Tax Act of 1947, as amended, are included in the Appendix to the opinion of the United States Court of Appeals, printed in Appendix B to this petition. These provisions have not been repeated in Appendix C, *infra*, which contains the additional provisions of the Act deemed pertinent, together with the constitutional provisions.

## STATEMENT OF THE CASE

The District of Columbia Income and Franchise Tax Act of 1947, as amended, imposes an individual income tax upon "residents" of the District of Columbia, who are defined to be persons who maintain a place of abode in the District of Columbia for more than seven months of the taxable year or who are domiciled in the District of Columbia on the last day of the taxable year. Respondent Davis satisfied both of the conditions required by the Congress as a prerequisite to the imposition against him of District income

tax liability. As succinctly stated in the opinion of the United States Court of Appeals for the District of Columbia Circuit of January 5, 1967:

> "* * * Respondent filed with the District an individual income tax return for the period from April 1, to December 31, 1963, reporting therein adjusted gross income for that nine-month period of $17,178.04, from which he took certain deductions prorated for the nine-month period reflected on his return. Respondent earned $5,142.42 for the three months of 1963 during which he was domiciled in Detroit. He paid to the State of Michigan an intangible personal property tax of $26.71 for this period and an income tax to the City of Detroit of $45.41, for a total of $72.12. Respondent did not include any of the income earned by him prior to April 1, 1963 in his District of Columbia return for 1963, nor did he claim any credit for the taxes he paid in Michigan during the three-month period. Respondent computed his tax to the District for the nine-month period at $467.12 which he duly paid.
>
> "Subsequently the District Finance Office assessed a deficiency in respondent's tax, finding that he should have computed his District tax on the basis of his income for the *entire year*, rather than for only the nine-month period. The new assessment resulted in a revised tax of $664.42, (before credits), making a deficiency in tax of $197.30. The Finance Office then allowed a credit of $72.12 for the Michigan and Detroit taxes (which credit respondent had not previously claimed), making a net deficiency of $125.18, which respondent thereafter paid under protest (together with interest)." (App. B pp. 17a-18a.)

Thereafter, respondent filed in the District of Columbia Tax Court a petition seeking a refund of the deficiency in taxes assessed against him and which had been based upon so much of respondent's income as was earned by him prior to the time he became a resident and domiciliary of the Dis-

trict of Columbia. (R. 1) After hearing, the Tax Court, although agreeing with the District of Columbia that the Income and Franchise Tax Act imposed a tax upon respondent based upon his entire income for 1963, nevertheless concluded that to the extent the statute imposed a tax upon income earned by respondent while he was in Michigan, the statute was unconstitutional. The Tax Court ordered a refund to be made to respondent of the amount of income tax assessed against him as a deficiency, and the District of Columbia appealed from that decision to the United States Court of Appeals for the District of Columbia Circuit. (App. B, p. 18a; R. 35.) The Court of Appeals affirmed the decision of the Tax Court, but based its affirmance on grounds other than that of the constitutionality of the District's statute holding that, as a matter of statutory construction, the Income and Franchise Tax Act of 1947 did not impose a tax upon income received by Mr. Davis prior to his becoming a "resident" of the District.

These proceedings were commenced by Mr. Davis in the District of Columbia Tax Court under D.C. Code, 1961, Sec. 47-2403. The District, pursuant to D.C. Code, 1961, Sec. 47-2404, perfected an appeal to the United States Court of Appeals for the District of Columbia Circuit.

## REASONS FOR GRANTING THE WRIT

In the judgment of petitioner, the reasons for granting review on certiorari are as follows:

1. The Court of Appeals, contrary to the plain intention of the Congress in a taxing statute enacted by it for the District, has erroneously construed that statute so as to eliminate as taxable income items of income which the statute subjects to tax.

2. The decision of the Court of Appeals is directly in conflict with the construction in 1942 by the Court of Appeals of Maryland of a Maryland taxing statute so closely paral-

leling that of the District as to be described as identical in all features salient to those in this case; and the decision of the Maryland Court of Appeals was expressly referred to with approval in 1950 by a United States District Court in Maryland consisting of three judges.

3. A review by this Court of the decision of the Court of Appeals is important to the administration of a congressionally enacted tax law of the District of Columbia providing revenues required for the administration of the District of Columbia Government.

## I. Impact of the Decision

Prior to the decision of the Court of Appeals in this case, the Income and Franchise Tax Act of 1947 had been consistently construed by the authorities of the District of Columbia charged with its administration as imposing in cases such as this a tax upon the entire income of a "resident" of the District of Columbia who, like respondent here, had become a "resident" subsequent to the commencement of the taxable year. But in those cases, and as was applicable to respondent, such a resident was entitled to a credit against his District income tax, of taxes paid by him as a domiciliary of another jurisdicition, to that jurisdiction as individual income taxes or intangible personal property taxes for the same taxable year. For the first time, and many years after the date of the enactment of the District's taxing statute, the Court of Appeals has, by construction, eliminated, in the case of taxpayers situated as respondent, income heretofore consistently held to be subject to tax. It is impossible, of course, to state accurately the effect upon the revenues of the District of Columbia of the decision of the Court of Appeals. But it would appear evident that these revenues will be substantially diminished, with the obvious necessity, in view of the District's present financial condition, that the diminution be counter-balanced

through the medium of increases in other taxes or the institution of new taxing measures.

This case, and the results which necessarily follow upon the decision of the Court of Appeals are matters of paramount importance to the District of Columbia in the administration of one of its major taxing statutes and the maintenance of its revenues. Within its scope, involving as it does the liability for District individual income tax of persons who, although not residents of the District for the entire taxable year, are nevertheless liable to District tax, this case equals in importance the questions which prompted this Court in *District of Columbia* v. *Murphy*, 314 U.S. 441 (1941), and *Pace* v. *District of Columbia*, 320 U.S. 698 (1944), to review decisions of the United States Court of Appeals which also involved District of Columbia taxes. In this respect, this case is comparable to *General Motors Corporation* v. *District of Columbia*, 390 U.S. 553, (1965), where this Court reviewed the decision of the United States Court of Appeals for the District of Columbia Circuit because of its significance to interstate commerce.

## II. The Tax Assessed by Petitioner against Respondent was, in All Respects, Valid

It was held by the Court of Appeals for the District of Columbia in *Neild v. District of Columbia*, 71 U.S. App. D.C. 306, 110 F.2d 246 (1940), that:

> "• • • Subject only to those prohibitions of the Constitution which act directly or by implication upon the federal government, Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end. In fact, when it legislates for the District, Congress acts as a legislature of national character, exercising complete legislative control as contrasted with the

> limited power of a state legislature, on the one hand, and as contrasted with the limited sovereignty which Congress exercises within the boundaries of the states, on the other. * * *'" (71 U.S. App. D.C. at 310; footnotes omitted.)

The question now before this Court of the authority of Congress to impose against respondent a tax on income derived by him before he became a resident of the District of Columbia, if it is in any way governed by the similar authority of a state was considered and resolved in favor of the State in *Wood* v. *Tawes*, 181 Md. 155, 28 A.2d 850 (1942), *cert. denied*, 318 U.S. 788 (1943).. There, the Court of Appeals of Maryland considered a Maryland statute containing provisions so like those of the District statute as to suggest that the latter may have been patterned in part after the former, and concluded that Maryland could impose a tax upon the income of a resident of that State, part of which had been earned by him prior to the time he became a resident. The following extract from the opinion of the Maryland Court of Appeals establishes the comparability of the two statutes:

> "The state law * * * imposed the tax 'on the net income of every resident individual of this State,' and * * * defined a resident * * * as 'an individual domiciled in this State on the last day of the taxable year, and every other individual who, for more than six months of the taxable year, maintained a place of abode within this State, whether domiciled in this State or not.' It expressly excluded from the gross income which is subject to deductions to ascertain the net income to be taxed * * * that 'which this State is prohibited from taxing under the Constitution of the United States, or under any Act of Congress * * * in conformity therewith,' and * * * allows a deduction of any amount of income tax which the individuals may have paid to another state. * * *

"Whatever application the words 'domicile' and 'resident' may require elsewhere, under this statute the tax is imposed on incomes of every individual who for more than six months of the taxable year maintained a place of abode within the State, whether domiciled in the state or not. It is a provision contained in a large number of state income tax statutes. Maintenance of a place of abode, however, must involve at least a sufficient residence within the state to bring the individual within the taxing jurisdiction, otherwise the exaction might amount to a deprivation in violation of the 14th Amendment of the United States Constitution. But subject to that qualification the state has power to impose the tax on such individuals even on the basis of income gained outside the jurisdiction, including that received as salary from the federal government. The exaction is of a share in the expenses of the state government the benefits of which the individual chooses to enjoy. * * *" (23 A.2d at 852-53.)

In respect of the Maryland resident who, like respondent here, earned part of his income prior to the date when he became a resident of Maryland, the Court said:

"The argument on the last appeal, in support of a deduction from the basis of Mr. Wood's tax of that portion of his income received before he came into the state, attacks the constitutionality of accepting under any of the various state statutes the test of residence during less than a year for computing the tax on a whole year's income. All the statutes to which our attention has been called accept that test. There is no contention that Mr. Wood paid the tax on the deducted portion to any other jurisdiction; payment of it, if found, would cause a deduction under the Maryland law. * * * There is authority for the trial court's conclusion that the tax on that portion, even when not paid elsewhere, is not collectible. * * * but this court has reached

> a different conclusion. * * * An abode for the larger part of the year, or even less, has been long and widely taken as a fair measure for that purpose. * * * That length of time gives assurance of a desirable degree of permanency, and the propriety of inclusion of the individual among the members of the taxable community; and the result seems especially fair when the amount of any payment made to another jurisdiction on the same income basis is to be deducted, so that double taxation is avoided. We find no constitutional prohibition of it." (28 A.2d at 855.)

*Wood* v. *Tawes, supra,* was discussed by the United States District Court for the District of Maryland in *Reiling* v. *Lacy,* 93 F. Supp. 462 (1950), *appeal dismissed,* 341 U.S. 901 (1951). The Court said:

> "The plaintiff in the present case raises two additional points which were not referred to in the Court's decision in Wood v. Tawes, supra. These points are (1) * * * and (2) that under * * * the Maryland Code, certain taxpayers who must pay income taxes to other States are granted credit against their Maryland income taxes for taxes so paid, whereas the present plaintiff, since he is not taxed by his domiciliary State of Illinois, can receive no such credit. * * * As to the second point, the purpose of the provisions of the Maryland Code to which plaintiff refers is to avoid double taxation, even though such is not unconstitutional. * * * These provisions were upheld in Wood v. Tawes, supra." (93 F. Supp. at 470-71.)

If the Maryland statute was valid and in no way conflicted with the Fourteenth Amendment to the Constitution, it is exceedingly difficult to postulate that the Congress of the United States is inhibited by the Fifth Amendment when it enacts similar law for the District of Columbia. Even if it were questionable whether a State could enact such a law,

a question which under many pronouncements of the courts is not to be resolved lightly against the State, the Congress with its broad general powers, coupled with the specific mandate of the Constitution that it provide for the welfare of the District of Columbia and its residents, cannot be said to have so far transcended the limits of its constitutional authority as to cause its considered legislative enactment for the District of Columbia to be invalid.

The United States Court of Appeals for the District of Columbia Circuit, unlike the District of Columbia Tax Court, reached its conclusion in favor of respondent on the basis of a construction of the District's taxing statute, accepting for this purpose the contentions of respondent as set forth in his brief and quoted in the court's opinion. It is notable, however, that the court makes no reference to *Wood* v. *Tawes, supra,* and *Reiling* v. *Lacy, supra,* although these cases were cited to it.

In its opinion (App. B, p. 24a), the United States Court of Appeals referred to the statutes of states and said that:

> "* * * numerous state courts have considered the question here involved under statutes not unlike the District law and have concluded that the various *state legislatures* did not intend to tax income earned in another state prior to domicile in the taxing state. * * *" (Emphasis added.)

None of the cases cited by the Court of Appeals[1] contains any reference to the existence in the state statute under consideration of a provision authorizing a credit against the state tax in the manner authorized by the District's statute. Only one decision, *Martin* v. *Gage*, 281 Ky. 95, 134 S. W. 2d 966 (1939) refers to a provision authorizing a credit, but that credit was extended only on a reciprocal

[1] *Greene* v. *Wisconsin Tax Comm'n.*, 221 Wis. 531, 266 N. W. 270 (1936); *Kennedy* v. *Commissioner*, 256 Mass. 426, 152 N. E. 747 (1926); *Martin* v. *Gage*, 281 Ky. 95, 134 S.W. 2d 966, (1939); *Forester* v. *Culpepper*, 194 Ga. 744, 22 S. E. 2d 593 (1942).

basis, *i.e.*, Kentucky would permit a tax credit if another jurisdiction claiming entitlement to a tax from the same taxpayer extended a like privilege, a restriction not contained in the District's law.

The intention of state legislatures is hardly controlling upon the intention of the Congress, and if those courts which construed state taxing measures were concerned with constitutional limitations upon the authority of the states to tax, it does not follow that the Congress, in legislating for the District of Columbia, is subject to the same limitations. And even if this were so, the credit allowed under the District's statute against District tax for amounts paid by a taxpayer to another jurisdiction as a domiciliary thereof would, as the Court of Appeals of Maryland held, satisfy any requirement of avoidance of double taxation. At the very least, it is clear that the judges of the Court of Appeals of Maryland and the judges of the statutory United States District Court which decided *Reiling* v. *Lacy, supra,* were satisfied that the Maryland statute there under consideration was an entirely proper exercise of the state's legislative authority.

In its opinion, the Court of Appeals refers to *Lee* v. *Commissioner*, 6 B.T.A. 1005 (1927) which, in the words of the Court of Appeals, held "that the Federal income tax was not applicable to income earned by a nonresident alien prior to the time of becoming a resident of the United States." The Court of Appeals states that "the *Lee* case, with its subsequent acceptance by the Treasury, is persuasive support for respondent's argument, particularly in view of the close affinity between the District of Columbia law and the Federal taxing statute." (App. B, p. 23a.) But a reading of *Lee* shows that it was not suggested that Congress lacked the authority to impose against Mr. Lee a tax upon his entire income; the Board of Tax Appeals held only that the Federal statute did not so provide. Moreover, the Board noted

that if it were to uphold the position of the Commissioner, that residence in the United States on the last day of the taxable year determined status for the imposition of tax, "one who has been a resident alien, and as such subject to tax on income from all sources, could escape liability on income from sources outside the United States by becoming a nonresident prior to the close of the taxable year." (6 B.T.A. 1007) The Board concluded that such a construction would be contrary to another section of the Revenue Act of 1921.

In view of the provisions of the Income and Franchise Tax Act of 1947, *Lee* is not authority for the position which the Court of Appeals has taken. Moreover, contrary to the Revenue Act involved in *Lee*, the District's statute, in its definition of "resident," subjects to tax persons who are domiciled in the District on the last day of the taxable year.

As a reading of the opinion of the District of Columbia Tax Court will show, that court concluded that the District's statute imposed against respondent the tax which the District of Columbia had assessed against him. To that extant the Tax Court agreed fully with the District's position. The construction of the District's statute accepted by the United States Court of Appeals is at variance with its clear language. It attempts, for example, in the case of respondent, to define the statutory words "taxable year" to mean, as to him, less than a calendar year, when the statute expressly provides that if the taxpayer has not established a fiscal year, the words are to mean the calendar year.[2]

Further, the court uses the references in the statute to changes in the status of a taxpayer and to the filing of a return for a fractional part of a taxable year as levers for arriving at a conclusion that the statute imposes a tax upon respondent's income only to the extent that he earned it

[2] App. B, p. 25a.

while a resident of the District of Columbia. But the difficulty is that the references to a change in the status of a taxpayer relate to a change in marital status and to the death of a taxpayer only, and those situations are entirely inapplicable to respondent.[3] In respect of a return for a fractional part of a calendar or fiscal year, the opinion ignores the fact that those words are contained in the definition of "taxable year," and that in that definition, immediately following the reference to returns for a fractional part of a calendar year or fiscal year, the statute prohibits changes from a calendar year to a fiscal year or from a fiscal year to a calendar year "within any taxable year" without the written permission of the Assessor, a clear indication of the meaning of returns for a fractional part of a calendar or fiscal year.[4]

Additionally, the court ignores the fact that if the Congress had intended to exclude from gross income amounts earned by a resident of the District of Columbia prior to the time he became such a resident, the statute would undoubtedly have specifically so provided, and would not have allowed any credit for taxes paid to another jurisdiction. And it attempts to resolve the problem of the existence of a credit against District taxes, a problem immediately raised by the court's construction of the statute, through the device of saying in substance that, since in the case of respondent income earned by him while a resident of Michigan was not includible in the basis for District tax, *a fortiori*, he is not entitled to any credit for taxes paid by him in Michigan. But the statute makes no such distinction, and clearly was never designed to achieve such a result.

Finally, it is said by the Court of Appeals that the credit against District taxes, in the case of a taxpayer such as respondent, will be applicable only to those taxes paid by respondent to another jurisdiction as income or intangible

[3] App. B, p. 26a-27a.
[4] App. B. p. 25a.

personal property taxes for the period commencing after the time respondent became a resident of the District of Columbia. Thus, if respondent had remained a domiciliary of Michigan during the entire calendar year here involved, and because of that status had been required to pay to Michigan for the entire calendar year an income or intangible personal property tax, the amount so paid would be a credit in full against a District tax computed on only part of respondent's total income. Certainly, the Congress did not so intend, for under these circumstances in most cases the District's tax would be completely nullified.

Although the question here presented was not discussed in *District of Columbia* v. *Murphy, supra,* that case did involve the 1939 District of Columbia Income Tax Act which imposed a tax upon "* * * the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year" (D. C. Code, 1961, § 47-1502(a) ). A reading of the opinion of this Court in *Murphy* indicates that the Court found nothing objectionable in the selection by the Congress of domicile in the District of Columbia on the last day of the taxable year as the taxable event, nor does it appear that there was any question but that the tax was imposed on the entire income of the taxpayer earned by him during the entire taxable year (which would mean, except as otherwise specifically provided, the entire calendar year, except in the case of a fiscal year taxpayer). As the Court said in the course of its opinion:

> "* * * The taxing authority is warranted in treating as *prima facie* taxable any person quartered in the District [of Columbia] on tax day whose status it deems doubtful. * * *
>
> "To hold taxable one who contends that he is not domiciled here, the Board need not find the exact time when the 'attitude and relationship of person to place, which constitute domicile, *Texas* v. *Florida,* 306 U.S. 398, 411, were formed so long as it finds

they were formed before the tax day. What was at first a firm intent to return may have withered gradually in consequence of dissolving associations elsewhere and growing interests in the District. It is common experience that this process usually is unmarked by any dramatic or even sharply defined episode. The taxing authority need not find just when the intent was finally dissipated; it is enough that it finds that this has happened before the tax day.

"If one has at any time become domiciled here, it is his burden to establish any change of status upon which he relies to escape the tax. *Anderson* v. *Watt, supra,* at p. 706." (314 U.S. 441, 455-56.)

A comparison of the 1939 District Income Tax Act (D. C. Code, 1961, §§ 47-1501 to 47-1547, inclusive) with the Income and Franchise Tax Act of 1947 shows that the pertinent provisions of both Acts are substantially the same. Since there is no contrary court decision, it would appear clear that it was never suggested that the 1939 Act was to be construed in the manner in which the Court of Appeals has construed the 1947 Act.

## CONCLUSION

The taxes assessed against respondent were clearly in accordance with the District of Columbia Income and Franchise Tax Act of 1947 and with the intent of the Congress when it enacted that statute. The credit against the District tax allowed to respondent because of his liability for tax as a domiciliary of Michigan avoids any issue of double taxation, and was clearly responsive to any question which might arise concerning the statutory directive that respondent's District tax be computed upon his income for the entire calendar year, including that derived by him prior to the time he became a resident of the District of Columbia.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

CHARLES T. DUNCAN,
*Corporation Counsel, D. C.*

HENRY E. WIXON,
*Assistant Corporation Counsel, D. C.*

Attorneys for Petitioner
District Building
Washington, D. C. 20004

April, 1967